



TOWN OF HUDSON

Zoning Board of Adjustment



Charlie Brackett, Chairman David Morin, Selectmen Liaison

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MEETING MINUTES – March 14, 2019 - approved

The Hudson Zoning Board of Adjustment held a meeting on March 14, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM.

Chairman Charlie Brackett called the meeting to order at 7:04 PM with an apology for the late start due to the non-public session and the recording crew needing to warm up the equipment to record the public session.

Mr. Brackett stated that the Board is assembled to hear requests for relief from the State Laws and Local Zoning Ordinance; noted that copies of the Agenda as well as Appeal Forms are located on the shelf by the door; outlined the process of the meeting noting that the Board would first hear a presentation from the applicant before hearing from the public and asked that everyone addressing the Board to come either to the table or lectern and to give their name and address, with spelling, and lastly; outlined housekeeping issues that included turning cell phones off, no talking in the audience and no smoking.

Members present were Charlie Brackett (Regular), Gary Daddario (Regular), Maryellen Davis (Regular/Acting Clerk), Gary Dearborn (Regular) and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, Dave Morin, Selectmen Representative, and Louise Knee, Recorder. For the record, all Regular Members voted.

I. NON-PUBLIC MEETING WITH TOWN COUNSEL, DAVID LEFEVRE BEGINNING 6:00 PM

Noted as held until 6:52 PM

II. CONTINUED PUBLIC HEARINGS OF DEFERRED APPLICATIONS BEFORE THE BOARD BEGINNING 7:00 PM

1. Case 256-001 (Deferred from 2-28-19): Ramenbhati K. Patel, Trustee of the Hudson Realty Trust, 99 River Road, Hudson, NH, requests a Special Exception to convert his convenience store second floor space into an accessory/caretaker's residential space. [Map 256, Lot 001, Zoned G-1; HZO Article V §334-22, Table of Permitted Accessory Uses].

Acting Clerk Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 1/14/2019, recapped his Staff Report signed 2/15/2019 and

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noted that at the last meeting there was discussion regarding his Zoning Determination rationale and distributed his supporting documentation.

Atty. Brad Westgate of Winer and Bennett at 111 Concord Street in Nashua, NH, introduced himself as representing the owner and applicant, Ramenbhati Patel, Trustee of Hudson Realty Trust.

Mr. Brackett stated that he was not at the last meeting, that it is his understanding that because there were not three (3) positive votes to either motion made, it was agreed that, even though there was discussion, the entire Case would be presented tonight. Atty. Westgate concurred and in the interest of efficiency distributed a package of material that contained:

- An excerpt of Hudson's Zoning Ordinance (ZO) Section 334-22 Table of Permitted Accessory Uses and 334-23 General requirements (Special Exceptions);
- Zoning Determination #19-009 dated 1/14/2019;
- As-built Plan dated 12/20/2013 prepared by TF Moran showing that the property is split between Hudson, NH, and Tyngsborough, MA, with the store and septic system on the NH side and a few parking spaces in MA;
- letter from Venkata Reddy Emani, Manager Hudson Quick Stop dated 2/28/2019 regarding more than sufficient available parking spaces;
- letter from PE Thomas Burns of TF Moran dated and stamped 2/28/2019 regarding the existing subsurface disposal system's ability to accommodate the apartment; and
- copies of emails with their architect Karl Frank and Steven Dube of Hudson Fire Department attesting that only one (1) stairwell and one (1) life-safety-code-compliant window is required for second floor apartment measuring under 2,000 SF and noted that the plan presented was for a 750 SF apartment.

Atty. Westgate stated that they are seeking a Special Exception under Sections 334-22 and 334-23 of the Zoning Ordinance (ZO) to permit as an Accessory Use a caretaker's residential unit on the second floor of the existing convenience store at 99 River Road. Atty. Westgate stated that the convenience store underwent Site Plan Review with the Planning Board, that it was approved in 2011 and that as a condition of approval an As-built Plan was produced in 2013. The property is split by NH/MA State line, with the store, on-site septic system, most of the twelve (12) parking spaces and the entrance onto the property are located in NH. The property has a total acreage in the twenty-one thousand square foot (21K SF) range. The first floor of the building is used for the convenience store.

Atty. Westgate stated that a residential caretaker's dwelling unit is a regularly and historically acceptable accessory use to a retail operation. In ZO Section 334-22, Atty. Westgate highlighted two (2) sentences: (1) that "the addition of such accessory uses does not result in the mixed or dual use of a parcel and does not require additional lot area, frontage or setbacks"; and (2) that "accessory uses listed in the Table of Permitted Accessory Uses are not intended to be the only accessory uses allowed" but would require a Special Exception.

Atty. Westgate stated that the purpose of the accessory dwelling unit, the caretaker's residence, is to provide living quarters for the store manager, or a full time employee, with a spouse. The addition of the living quarters will have no impact to the exterior of the building, no change in its footprint, no raised roof and it will meet Fire and Safety Codes. The property is serviced by an on-site septic system and as attested by PE Tom Burns from TF Moran the septic system has enough capacity to accommodate the proposed dwelling unit and the convenience store. During Site Plan Review, the Planning Board determined that eleven (11) parking spaces were required for the convenience store and according to Mr. Buttrick there should be two (2) parking spaces for the apartment. There exist twelve (12) parking spaces on site. An argument can be made that a parking space is designated for an employee of the store and if an employee is residing in the apartment, only one additional parking space should be sufficient; however, if that is not acceptable, they will ask the Planning Board for a waiver on the required eleven (11) parking spaces based on the testimony in the store manager's 2/28/2019 letter. With regard to egress requirements, Mr. Jit Patel met with his architect, Karl Frank, who reached out to the Hudson Fire Department and according to the emails exchanged, only one (1) stairwell and one (1) life-safety-code-compliant window is required for a 750 SF second floor apartment.

Atty. Westgate next addressed the criteria for the granting of a Special Exception and the information shared included:

- A) *use not in the Table of Permitted or Accessory Uses*
 - proposal is for an Accessory Use, as per Zoning Determination
 - a caretaker apartment is not listed in the Table
 - they are seeking a Special Exception per ZO Section 334-22
- B) *proposed use meets applicable requirements*
 - there is nothing specific in ZO for caretaker dwelling units like there is for wetlands
- C) *proposed use is consistent with purpose and intent of District*
 - the G-1 District allows a variety of uses, including both commercial and residential; therefore having one within the other meets the ZO
- D) *proposed use is compatible with character of surrounding neighborhood*
 - surrounding area has mixed uses already - the Porter house and Ayotte's store were cited as examples
 - 84 River Road kept the house when storage units were added
 - there will be no changes to the footprint or exterior of the building,
 - there is no change proposed for utilities
 - there will be no operational changes as the tenant will be an employee
- E) *primary access from arterial or collector roads*
 - access is River Road, an arterial road, and no changes are proposed

With regard to compliance and to insure that the tenant is an employee, with spouse, of the convenience store, Atty. Westgate stated that an affidavit signed at the onset, prior to the issuance of a CO (Certificate of Occupancy), and possibly reaffirmed every year, would suffice because any violation of an affidavit would be subject to the penalty of perjury. Atty. Westgate also noted that the Code Enforcement Officer can follow-up at anytime.

Public testimony opened at 7:31 PM and closed at 7:32 PM. Only one individual addressed the Board. John Porter, 97 River Road, stated that he lives next to the store and sees no problem with it having an apartment for an employee, there's plenty of parking and added that it is a good thing.

Ms. Davis questioned the existing doors. Jit Patel, 5 Baldwin Lane, Hopkinton, MA, son-in-law and manager of Mr. Ramenbhati Patel's various properties, responded that the door entering the building from the north leads to the stairway and to the door leading into the store which can be locked and that the other door at the back of the building is for deliveries only and does not have access to the apartment.

Mr. Dearborn noted that the Building Permit specified a one-story building and now it exists as a 1½-story building. Mr. Westgate stated that the convenience store is located on one floor. Mr. Ramenbhati Patel stated that even at the time of construction there were references made to the lower floor, the middle floor and the upper floor. Mr. Brackett noted that in 2013 there was a variance application submitted and then withdrawn for an apartment and wondered if work on the second floor occurred then. Atty. Westgate stated that it could be reviewed with the Planning Board when they pursue a Modification to their Site Plan Review.

Mr. Dearborn asked for clarification on the term 'caretaker' and whether the living unit would be lived in seven days a week. Atty. Westgate stated that the tenant would be either the store manager or a full-time employee with their spouse, that the apartment could be their permanent address and added that their application is not requesting a "caretaker" apartment, that the term was coined for ease in reference for the living quarters to be an accessory use. Mr. Daddario asked whether a condition of approval specify that the 'employee tenant' be a full-time employee of the store and Atty. Westgate stated that they would not object to the specificity and added that it would need to also include a spouse.

Mr. Brackett stated that the variance application of several years ago was withdrawn but not prior to receiving quite a bit of testimony and asked if those comments apply to today and this application. Atty. Westgate stated that it is not applicable, that prior request was for a variance to create a Dual Use and has never been introduced to the record for this Special Exception application. Mr. Brackett stated that historically, in Hudson, this type of request has always been handled as a secondary Primary Use, a Dual Use, and until the Determination was made, had not even contemplated an apartment as an Accessory Use to a business. Mr. Brackett referenced the Table of Permitted Accessory Uses and the first sentence states "traditional" "secondary uses" and to his way of thinking, an apartment is not a traditional accessory use to a business *in Hudson* and expressed concern with setting a precedent letting a Principal Use to become an Accessory Use. A Residential Use has traditionally been considered a Primary Use in Hudson.

Ms. Davis expounded and stated that in Hudson accessory use is customarily viewed as being compatible to the primary use and for a store, in her opinion, that could include a deli or a coffee bar. Mr. Brackett referenced ZO Section 334-23 Criteria A that states that the accessory use being sought "is so similar to other uses permitted by special exception in the relevant district" but according to his recollection, the

Board has never approved an apartment as an accessory use to a business and therefore, this request does not meet this criteria, nor does it meet criteria C & D.

Atty. Westgate's response included the following statements. In terms of how to analyze the ZO, it is not Hudson specific, accessory uses can be permitted whether on the Table or not, and it becomes more of a question of whether the proposed use is adjunct or not to the principal use. What has occurred in history cannot encompass all that could happen in the future. Historically, resident and shop combinations have coexisted in the same building. It is the dynamic of the business that defines the scope and the need. Atty. Westgate went to the Assessor's Office and received a list of all properties in Town with multiple uses but would have to go to the Community Development Department and pull their records to identify the specific uses. Reference made again to 84 River Road and the Assessor Card lists both residence and self-storage units and does not recall whether it needed a variance. With regard to character of the neighborhood impact, there is no external reference to an apartment. The Dual Use analogy is not before the Board, a Zoning Determination was made and the appeal period has expired, it is now binding. Atty. Westgate stated that he has never heard of a Zoning Board appealing a Zoning Determination.

Side discussion arose on the new process of not distributing Zoning Determinations but rather just making them available in the Public Folder and how, as in this case, this practice can be impacting cases before the Board. The 30-day appeal period holds firm.

Motion made by Mr. Daddario to grant the special exception allowing a 750 SF apartment to be constructed on the second floor of the convenience floor with the following five (5) conditions:

- (1) that there be no exterior access serving solely the apartment, access to remain solely the existing internal stairway
- (2) that the apartment will share the utilities with the convenience store – the apartment will not have separate utilities
- (3) the apartment can only be occupied by the store manager or a fulltime employee of the business along with a spouse
- (4) an affidavit attesting the identity and employment of the tenant be submitted prior to issuance of a Certificate of Occupancy and submitted every year after
- (5) parking for the apartment resident is limited to one (1) assigned space

Mr. Pacocha seconded the motion. Mr. Daddario stated that he made his motion based on his acceptance of the Zoning Determination that the apartment is an accessory use and that the criteria for the granting of a special exception have been met. Mr. Pacocha stated that even though he believes this should be a Dual Mixed Use variance, he supports the Zoning Determination. Ms. Davis and Mr. Dearborn stated that the residence is a Principal Use and not an Accessory use to the Principal Use of a store. Vote was 3:2. Ms. Davis and Mr. Dearborn opposed. Motion passed. Special Exception granted. The 30-day appeal period was noted.

2. Case 209-001 (Deferred from 2-28-19): Mark Pilotte of Dakota Partners, LLC, 1264 Main St., Waltham, MA requests a Variance at 161 Lowell Road, Hudson, NH to permit the use of the entire buildable lot area (after subdivision) within the Applicant's lot for calculation of density, using a portion of that buildable lot area within the G Zone. [Map 209, Lot 001, Split districts: Zones B and G; HZO Article VII §334-27, Table of Minimum Dimensional Requirements- Note 2].

Ms. Davis read the Case into the record. Mr. Buttrick referenced his Zoning Determination dated 1/23/2019 and his Staff Report signed 2/19/2019 and summarized as follows: the entire lot is almost eighty nine acres (88.8) and is divided by the B Zone along Lowell Road and the G Zone to the rear; the intent is to subdivide the lot into two parcels and develop multi-family housing in the B Zone; and the applicant desires to utilize acreage located in the G Zone to calculate density for units in the B Zone; and there is no provision in the Zoning Ordinance addressing utilization of land in another Zone for density calculation and he has determined that it cannot be done without a variance from the ZBA. Mr. Buttrick also noted receipt of Town Planner Brian Groth emails dated 2/19/2019 and 2/25/2019.

Atty. Thomas J. Leonard of Welts, White & Fontaine, P.C. of Nashua, NH, introduced himself as representing Dakota Partners, noted that Mark Pilotte of Dakota Partners and Carl Dubay, PE, were also present. Atty. Leonard stated that he submitted a thumb drive to Mr. Buttrick that contains copies of the plans and proceeded to distribute paper copies as well. Atty. Leonard summarized the material: application, Zoning Determination, a subdivision plan, a site plan, a tax map, a GIS map, the Table of Uses, the Dimensional Requirements Table.

Atty. Leonard stated that it is at present a large parcel, approximately eighty-eight (88) acres with frontage on Lowell Road, has sewer and water and is split zoned, with B Zone on the front along Lowell Road and G Zone to the rear. The interesting aspect is the assignment of the B Zone seems to be arbitrarily assigned five hundred feet (500) from Lowell Road without any consideration to the land or lot configuration.

Atty. Leonard stated that the Dakota Partners are residential developers focusing on multi-family homes that are affordable, also known as workforce housing. The property owner and Dakota Partners intend to subdivide the property and create roughly a twelve to thirteen (12-13) acre lot and a seventy-five (75) acre lot. Atty. Leonard referenced the Conceptual Plan for Subdivision and a Conceptual Plan for Site Plan. The proposal for the front 12.8 acres is to construct two (2) buildings, in two (2) phases, with each building having forty-eight (48) units each, and noted that all the buildings and parking would be contained in the B Zone that allows multi-family dwellings. One unit in the first building will serve as a model and an office.

Atty. Leonard stated that they sought the Zoning Administrator to determine the lot area needed to support the ninety-six (96) units. Note 2 in the Table of Dimensional Requirements gives a mathematical requirement regarding the buildable lot area. The proposed Site Plan has the required amount. In reviewing the concept, one of the issues that has been raised is that the lot has two (2) zones and Mr. Buttrick has determined that for purposes of calculating buildable lot area, only the land in the B

Zone can be used in the calculations. Atty. Leonard stated that they do not agree and that consideration should be given to where on the lot the use will reside.

Atty. Leonard stated that they are before the Board questioning the Zoning Determination and if the Board agrees with Mr. Buttrick, then they are before the Board for a Variance to use the total buildable area of the proposed 12.7-acre lot.

Ms. Davis asked the amount of acreage in the B Zone and the G Zone. Atty. Leonard responded that the total acreage for the multifamily lot would be 12.7 acres, that there are approximately nine (9) acres in the B Zone and referenced the Proposed Subdivision Plan that displays the Density Calculations based on buildable area. Discussion branched into 'buildable lot area' and whether the buildable lot area of the proposed lot has to be distinguished by Zone especially, in Atty. Leonard's opinion, when Zone is not referenced in ZO Article VII Section 333-27.1 for the definition of minimum buildable lot area. Atty. Leonard also stated that dimensional requirements also serve Hudson to control overcrowding, and in his opinion, they comply because there is enough land with 12.7 acres.

Atty. Leonard stated that workforce housing is a NH need and supported by RSA 674:58 and RSA 674:59, and that both the Hudson Master Plan and Hudson Zoning Ordinance support it in policy. Districts/Zones are configured based on compatible uses and with consideration for infrastructure. The G Zone is a generalized zone that allows multiple land uses with consideration to surrounding uses. The B Zone is the only Zone in Hudson that allows multifamily homes and the B Zone comprises approximately five percent (5%) of Hudson land and there are few spaces left in the B Zone for the proposed development. Atty. Leonard pointed out that all the B "use" has been contained in the B zone of the 12.7-acre lot and added that they also meet all other Zoning requirements.

Atty. Leonard stated that the State of NH is in the middle of a housing crisis, according to last month's *NH Business* magazine's cover story; there is not sufficient housing to support new workforce members.

Atty. Leonard stated that workforce housing can either be ownership or rental. The proposed project is only rental. Each of the two (2) buildings will contain forty eight (48) units of which twenty four (24) will be one-bedroom apartments and twenty four (24) will be two-bedroom apartments. Of the forty eight (48) units, thirty two (32) units will be rent restricted by agreement with the NH Housing Finance Authority to qualify as workforce housing. Atty. Leonard stated that they would *not* be Section 8 housing and outlined approximate income levels needed for tenants in order to rent a workforce unit. It was noted that the salary range includes professions such as teachers and municipal workers and anyone starting out in the workforce.

Discussion branched and included percentage of income affordability, the difference in percentages with rentals versus purchase, number in household, differences between one- or two- bedroom units, family growth, the intent of meeting both ends of the spectrum from people entering the workforce to those leaving the workforce, to managing rental units versus condominiums.

Atty. Leonard next addressed the criteria for granting of a variance. The information shared included:

1) *not contrary to public interest*

2) *spirit of Zoning Ordinance observed*

- the request is not contrary to public interest,
- the development of multifamily units is contained in the B Zone area of the lot,
- it does observe the spirit of the Ordinance
- it does not alter the essential character of the neighborhood
- does not violate the basic Zoning objectives
- it is serviced by Municipal water and sewer
- the area of the lot is ample for what is being proposed
- “open space” and passive recreational space are permitted in the G Zone
- there is approximately three (3) acres in the G Zone and when/if the remaining lot is developed it will provide a buffer
 - Mr. Daddario asked if it is the intent to keep the acreage in the G Zone as open space. Atty. Leonard confirmed that the three acres in the G Zone section will not be developed. Mr. Daddario asked if that would be put in writing and Atty. Leonard agreed.
 - Atty. Leonard stated that they are asking for 96 units on a 12.7 acre lot and only the three acres in the G Zone section of the lot is what is before the Board for its use in the density calculation. The G Zone portion will not be developed now or in the future.
 - Mr. Dearborn stated that the lot is being subdivided among two zones and asked if the lot could be created in just the B Zone.
 - Atty. Leonard stated that two compliant lots need to be created and each one needs frontage on Lowell Road. Enough frontage along Lowell Road has been set aside to service the rear 75 acres. Another consideration are the wetlands on site and a small area of steep slopes.
- Proposal violates no private rights of others
- All construction for the project is contained in the B Zone section of the lot, where it is permitted

3) *substantial justice done*

- The question “is there any loss to the individual that is not outweighed by a gain to the general public” – in other words, if the Board is going to impose a restriction it should benefit the public – a balancing act
- This is an important piece of land in Hudson and one of the few pieces that has adequate infrastructure (sewer / water) and can accommodate a multifamily development /workforce housing.
- There is no “magic” to the B Zone line running 500’ from Lowell Road
- Strict enforcement does not accomplish any purpose that is important to the Town or to the public generally
- The proposal offers a more effective and efficient use of the land to accommodate multifamily units.
- Workforce housing is important, it is essential to the economy of communities

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4) *surrounding property values not diminished*

- Proposed use is similar to abutters on Fox Hollow, with the main difference being that Fox Hollow offers ownership and has some of its buildings in the G Zone. This proposal only offers rentals and development is all in the B Zone.
- There is no impact on surrounding property values, it is zoned for multifamily and it fits into the Town's Master Plan
- Kensington Place in Bedford NH [a Dakota property] was cited as an example along with the Muse development which is a single family cluster development
- Buildings will be architecturally designed, ample open space will be provided, there will be a Club House, the property will be maintained and the project will increase the value of surrounding properties

5) *unnecessary hardship if not granted*

- property is split zoned and the Zoning Ordinance does not stipulate how to deal with split zones
- line for the B Zone is arbitrary – set at 500' off Lowell Road with no consideration to the land or lots – and does not serve a real public purpose
- wetlands on site
- size of lot is 88 acres and to subdivide, each lot must have access off Lowell Road
- State of NH has indicated that workforce housing is essential to the economic growth of the community
- Multifamily homes are only allowed in the B Zone and there are few tracks of land in the B Zone large enough to support multifamily developments, and there is of 5% of Hudson land in the B Zone
- There is public policy to support a particular use and available land is not widespread, it is important to make exceptions to the rules
- Indirect and unintended consequences exist with the arbitrary zone line and interferes with Town goals

Mr. Brackett stated that considering the hour and the number of people present, all public testimony will be taken tonight but deliberation may be continued to the next meeting. Mr. Brackett stated that the issue before the Zoning Board is the utilization of the land in the G Zone for density calculations and added that issues pertaining to architectural considerations, traffic, travel ways will be explored by the Planning Board, that the plans presented tonight are conceptual plans subject to fine tuning by the Planning Board.

Public testimony opened at 9:10 PM. The following individuals addressed the Board:

- (1) Philip MacSweeney, 10 Hickory Street, the first street directly behind this lot in a development of approximately two hundred fifty (250) houses with ten (10) houses along the back property line. This project proposes to squeeze ninety plus families in a small geographical area and it will have an impact regardless of the number of actual occupants. Going down Lowell Road today is bad, especially early morning or around four or so in the afternoon and this project will add over a hundred cars. Another concern is with the

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- sewage as about thirty (30) years ago there was a storm and he ended up with sewage in his basement. Schools are another concern, especially after yesterday when they cut their programs at Alvirne High School and shot down full day kindergarten. This project will affect everyone in Town.
- (2) Valerie Moore from Nutter, McClemmen and Fish at 155 Seaport Blvd. in Boston, MA, and is representing Farley White Hudson LLC who owns 55 Executive Drive, an immediate abutter to the west of this property in the Industrial Zone and the site is occupied by Comcast who operates their nationwide call center. The G Zone serves an important purpose for this industrial lot as a buffer. Farley White is concerned that this project is the first step for bringing residences closer to industrial uses and does not support this project as it could limit their ability to grow and sets a precedent that will eventually interfere. This project does not meet the criteria for a variance with regard to unnecessary hardship. A split zone is not unique. The project is allowed by right but not to the scale proposed. The applicant is creating the hardship. If the Board chooses to grant this project, please consider placing a restriction on the remaining 75 acre parcel in the G Zone that it will not contain residences.
- (3) Andrew Doyle, 18 Fox Hollow, asked how many units would be allowed without considering the land in the G Zone, how many vehicles will be allowed per unit, and how many parking spaces will be provided, and what use will there be in the G Zone acreage. Traffic is a concern. Testimony was given that there are not many rentals in Hudson but Fox Hollow alone has plenty of rentals available. Statement also made that it will have no affect on surrounding property values but no real estate expert testimony was provided and neither was evidence that it would not affect property values. Mr. Doyle stated that his background is in finance and he has his real estate license and does consider himself a real state expert and this project will affect surrounding property values. And lastly, the hardship criteria has not been satisfied and referred to Ms. Moore's comments.
- (4) Joan MacSweeney, 10 Hickory Street, asked how this project will affect the land across Lowell Road in addition to altering their view. According to Mr. Buttrick, the size of the sewer pipe in front of the property is eight inches (8") and that will probably not accommodate this project.

Being no one else to speak, public testimony closed at 9:29 PM.

Mr. Buttrick stated that one of the arguments of the applicant is the result of his Zoning Determination. Mr. Buttrick posted the Subdivision conceptual plan and explained his rationale to the public.

Atty. Leonard responded to the testimony received and his response included:

- That he heard the neighbors
- The Town of Hudson has a zoning scheme
- Yes, there will be more traffic but that is a Planning Board concern and they will be paying approximately \$170,000 in road impact fees and that may or may

not included a traffic light. Mr. Brackett stated that the Planning Board may require that a Traffic Study be performed.

- Studies have shown that there will be between ten to twenty school age children from this type of project. Some of those students may already be in the Hudson school system. They will be paying approximately \$350,000 in school impact fees.
- Atty. Moore's comments and concern for encroachment onto the I Zone neighbor are addressed by the fact that this development is contained in the B Zone section of the property and the Zoning Board is the first in a series of steps to get this project approved.
- There is no precedent for the encroachment issue
- There is hardship and it is caused by the arbitrary line of the B Zone. The lot has Municipal water and sewer and the site is appropriate. Mr. Brackett noted that if there were less units, they would not need land in the G Zone for density calculations.
- The yield would be 81 units if the entire B Zone land was used; but it cannot all be used because access to the back lot must also come from Lowell Road.
- The yield utilizing just the B Zone section in the proposed subdivision would yield 71 units. The economics are challenged with this number. A certain number is needed to cost balance the project. Approximately two thirds (2/3) of the units will be under the NH Housing Financing Authority. The economics work with 96 units.
- The Zone line is the only issue. The acreage supports 96 units.
- Mr. Doyle's property is over five hundred feet (500') away from any of the proposed buildings. There will be no clear cutting of trees.
- Mr. Doyle stated that there are plenty of rentals available in Fox Hollow but the real question is whether they are under NH Housing Financing Authority?
- Public health and welfare regarding the sewer will be addressed by the Planning Board to ensure there is no threat to public health or welfare.
- Changing the neighborhood? This project is in Hudson's Zoning Scheme, it is in the only zone that permits multifamily residences, there are other multifamily residences in this zone
- Land values will not be negatively impacted, evaluation must take in surrounding sites versus what permitted uses are allowed.

Mr. Pacocha asked what determined that Hudson needs workforce housing. Atty. Leonard stated that every community needs it, needs housing affordable to medium income earners, that there is less than 10% of the rents in NH for those with income in the forty thousand dollar range (\$40,000), that house prices in NH averages over \$300,000 and referenced the NH Business magazine. Atty. Leonard offered to send Mr. Buttrick the link. Atty. Leonard added that they are time table dependent and would like to be "shovel ready" by summer.

Public testimony opened for the second round at 9:58 PM. Only one individual addressed the Board. Kevin Lynch, 733 Fox Hollow, stated that after the last meeting he went home and Googled workforce housing and it clearly states low to moderate income and asked how that cannot impact, especially when you have Goodwill a mile from Fox Hollow and call it what you want it will be low income housing, may not be subsidized, and is a good concept for police officers and teachers but there is no

guarantee they will be the tenants. Another concern is the introduction of over two hundred (200) cars with no traffic light. Mr. Brackett restated that traffic will be handled by the Planning Board and Mr. Lynch asked how he would be informed when they would be meeting and was informed that he would receive a certified letter just as he did for the Zoning Board meeting. Public testimony concluded at 10:01 PM.

Mr. Brackett announced that they will discuss the variance application and the use of the G Zone for the density calculation. Ms. Davis noted that public testimony is now closed for this application. Mr. Brackett added that this application would be first on the Agenda.

Atty. Leonard stated that the workforce housing definition can be found in RSA 674:58 and in the specific definition there is mention "affordable" is costing 30% of household's gross annual income and that "workforce housing" is 30% of the medium household income for ownership purposes and for rental it is no more than 60% of the medium income for a three-person household. Atty. Leonard also submitted a 2018 chart of medium income and noted that for the Nashua area it is \$57,400.

Discussion arose on the next meeting date. The next scheduled meeting is March 28th. Only four (4) Members will be present. Everyone checked their calendars and the full Board could meet the following week.

Motion made by Ms. Davis to continue the hearing on Case #209-001 to next Thursday, March 21, 2019 and noted there would be no public input, just Board deliberation. Motion seconded by Mr. Pacocha. No further discussion. Vote was 5:0. Motion passed. Case continued to 3/21/2019.

Board took a ten-minute break. Mr. Brackett called the meeting back to order at 10:26 PM and directed the Board's attention to Agenda VI. Election of Officers.

III. Public Hearing:

By-Laws amendment 2nd reading

Discussed. Board reviewed the wording. Need to change the Vote Sheets to add a line for the Member's overall vote on the entire Case. A wording error was noted – a revision is needed to not indicate that the vote is taken on each criteria but by Member as that reflects how the Board operates.

IV. Minutes:

No Minutes were available for review.

V. REQUEST FOR REHEARING

No requests were submitted for Board consideration.

VI. OTHER

1. Election of Officers

Chairman: Charlie Brackett

Motion made by Ms. Davis and seconded by Mr. Pacocha to re-elect Mr. Brackett as the Chairman. No discussion. Vote was unanimous at 5:0. Motion passed.

Vice Chair: Gary Dearborn

Motion made by Mr. Pacocha and seconded by Ms. Davis to elect Mr. Dearborn as Vice Chairman. No discussion. Vote was unanimous at 5:0. Motion passed.

Clerk: vacant

Discussed. Historically, the Clerk has been an Alternate Member of the Board. There are no Alternate Members. A plea to the Selectmen was made again. The position is too cumbersome requiring note taking and participation in Board review of Cases. The position has been tended to alternately between Ms. Davis and Mr. Dearborn. The purpose of the role was discussed and the overlap with the Meeting Recorder. Need to check the RSAs, the Bylaws and discuss administratively how the roles of Clerk and Recorder and Admin Support Staff should blend.

2. Alternate Mike Pitre no longer a ZBA Member

Selectman Morin stated that the Town has not received a letter of resignation but the Selectmen has deemed the position vacated.

3. ZORC – Zoning Ordinance Review Committee

Mr. Brackett noted that all the Zoning Amendments were voted into effect and that it is time to reengage ZORC and that one of the items to consider is mixed use in strip malls.

4. Court Case

Mr. Buttrick stated that a Court Case has been filed on 14 River Road. Mr. Brackett stated that in his discussion with Town Counsel the 30-day appeal is “in-violate” and applies to everyone, including the Board.

Motion made by Mr. Dearborn, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 3/14/2019 Zoning Board meeting adjourned at 10:44 PM.

Respectfully submitted,

Charles J. Brackett, ZBA Chairman